

Form **990**Department of the Treasury  
Internal Revenue Service**Return of Organization Exempt From Income Tax**Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except black lung  
benefit trust or private foundation)

▶ The organization may have to use a copy of this return to satisfy state reporting requirements

OMB No 1545-0047

**2003**Open to Public  
Inspection**A** For the 2003 calendar year, or tax year beginning **JUL 1, 2003** and ending **JUN 30, 2004****B** Check if  
applicable

- ☐ Address  
change
- ☐ Name  
change
- ☐ Initial  
return
- ☐ Final  
return
- ☐ Amended  
return
- ☐ Application  
pending

Please  
use IRS  
label or  
print or  
type  
See  
Specific  
Instruc-  
tions**C** Name of organization**INSTITUTE FOR JUSTICE**

Number and street (or P O box if mail is not delivered to street address)

**1717 PENNSYLVANIA AVENUE, NW**

Room/suite

**200**

City or town, state or country, and ZIP + 4

**WASHINGTON, DC 20006****D** Employer identification number**52-1744337****E** Telephone number**(202) 955-1300****F** Accounting method☐ Cash☒ Accrual

Other (specify) ▶

• Section 501(c)(3) organizations and 4947(a)(1) nonexempt charitable trusts  
must attach a completed Schedule A (Form 990 or 990-EZ).**H and I are not applicable to section 527 organizations.****H(a)** Is this a group return for affiliates? ☐ Yes ☒ No**H(b)** If "Yes," enter number of affiliates ▶**H(c)** Are all affiliates included? **N/A** ☐ Yes ☐ No  
(If "No," attach a list)**H(d)** Is this a separate return filed by an or-  
ganization covered by a group ruling? ☐ Yes ☒ No**I** Group Exemption Number ▶**M** Check ☐ if the organization is **not** required to attach  
Sch B (Form 990, 990-EZ, or 990-PF)**G** Website: ▶ **WWW.IJ.ORG****J** Organization type (check only one) ☒ 501(c) ( 3 ) ◀ (insert no ) ☐ 4947(a)(1) or ☐ 527**K** Check here ☐ if the organization's gross receipts are normally not more than \$25,000. The  
organization need not file a return with the IRS, but if the organization received a Form 990 Package  
in the mail, it should file a return without financial data. **Some states require a complete return.****L** Gross receipts. Add lines 6b, 8b, 9b, and 10b to line 12 ▶ **6,952,023.****Part I Revenue, Expenses, and Changes in Net Assets or Fund Balances**

Revenue	1	Contributions, gifts, grants, and similar amounts received				
	a	Direct public support	1a	6,162,724.		
	b	Indirect public support	1b			
	c	Government contributions (grants)	1c			
	d	Total (add lines 1a through 1c) (cash \$ 6,162,724. noncash \$ )	1d	6,162,724.		
	2	Program service revenue including government fees and contracts (from Part VII, line 93)	2	186,829.		
	3	Membership dues and assessments	3			
	4	Interest on savings and temporary cash investments	4	166,030.		
	5	Dividends and interest from securities	5			
	Expenses	6a	Gross rents	6a		
6b		Less: rental expenses	6b			
6c		Net rental income or (loss) (subtract line 6b from line 6a)	6c			
7		Other investment income (describe ▶ )	7			
8a		Gross amount from sales of assets other than inventory	(A) Securities	8a	436,440.	
b		Less: cost or other basis and sales expenses	8b	13,205.		
c		Gain or (loss) (attach schedule)	8c	<13,205.>		
d		Net gain or (loss) (combine line 8c, columns (A) and (B))	8d	<9,037.>		
9		Special events and activities (attach schedule) If any amount is from gaming, check here <input type="checkbox"/>				
Net Assets		a	Gross revenue (not including \$ of contributions reported on line 1a)	9a		
	b	Less: direct expenses other than fundraising expenses	9b			
	c	Net income or (loss) from special events (subtract line 9b from line 9a)	9c			
	10a	Gross sales of inventory, less returns and allowances	10a			
	b	Less: cost of goods sold	10b			
	c	Gross profit or (loss) from sales of inventory (attach schedule) (subtract line 10b from line 10a)	10c			
	11	Other revenue (from Part VII, line 103)	11			
	12	Total revenue (add lines 1d, 2, 3, 4, 5, 6c, 7, 8d, 9c, 10c, and 11)	12	6,506,546.		
	13	Program services (from line 44, column (B))	13	4,452,055.		
	14	Management and general (from line 44, column (C))	14	593,983.		
15	Fundraising (from line 44, column (D))	15	629,423.			
16	Payments to affiliates (attach schedule)	16				
17	Total expenses (add lines 16 and 44, column (A))	17	5,675,461.			
18	Excess or (deficit) for the year (subtract line 17 from line 12)	18	831,085.			
19	Net assets or fund balances at beginning of year (from line 73, column (A))	19	7,925,320.			
20	Other changes in net assets or fund balances (attach explanation)	20	1,150,482.			
21	Net assets or fund balances at end of year (combine lines 18, 19, and 20)	21	9,906,887.			

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12-17-03

LHA For Paperwork Reduction Act Notice, see the separate instructions.

Form 990 (2003)

SCANNED DEC 1 2003

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**Part II Statement of Functional Expenses**

All organizations must complete column (A) Columns (B), (C), and (D) are required for section 501(c)(3) and (4) organizations and section 4947(a)(1) nonexempt charitable trusts but optional for others

Page 2

Do not include amounts reported on line 6b, 8b, 9b, 10b, or 16 of Part I.		(A) Total	(B) Program services	(C) Management and general	(D) Fundraising
22	Grants and allocations (attach schedule)				
	cash \$ _____ noncash \$ _____				
23	Specific assistance to individuals (attach schedule)				
24	Benefits paid to or for members (attach schedule)				
25	Compensation of officers, directors, etc	405,262.	332,012.	36,687.	36,563.
26	Other salaries and wages	2,389,033.	1,957,224.	216,269.	215,540.
27	Pension plan contributions	233,329.	174,321.	26,647.	32,361.
28	Other employee benefits	160,696.	121,543.	19,524.	19,629.
29	Payroll taxes	185,260.	148,025.	18,863.	18,372.
30	Professional fundraising fees				
31	Accounting fees	43,174.		43,174.	
32	Legal fees				
33	Supplies	54,492.	38,398.	8,614.	7,480.
34	Telephone	73,051.	52,775.	12,929.	7,347.
35	Postage and shipping	175,008.	82,975.	5,250.	86,783.
36	Occupancy	500,239.	371,513.	62,080.	66,646.
37	Equipment rental and maintenance	16,639.	10,131.	4,870.	1,638.
38	Printing and publications	253,958.	186,734.	2,956.	64,268.
39	Travel	230,689.	210,444.	10,663.	9,582.
40	Conferences, conventions, and meetings	9,664.	9,664.		
41	Interest				
42	Depreciation, depletion, etc (attach schedule)	139,179.	104,384.	15,310.	19,485.
43	Other expenses not covered above (itemize)				
a					
b					
c					
d					
e	SEE STATEMENT 4	805,788.	651,912.	110,147.	43,729.
44	Total functional expenses (add lines 22 through 43) Organizations completing columns (B)-(D), carry these totals to lines 13-15	5,675,461.	4,452,055.	593,983.	629,423.

Joint Costs. Check ☐ if you are following SOP 98-2

Are any joint costs from a combined educational campaign and fundraising solicitation reported in (B) Program services?

Yes ☐ No ☒

If "Yes," enter (i) the aggregate amount of these joint costs \$ \_\_\_\_\_, (ii) the amount allocated to Program services \$ \_\_\_\_\_,

(iii) the amount allocated to Management and general \$ \_\_\_\_\_; and (iv) the amount allocated to Fundraising \$ \_\_\_\_\_

**Part III Statement of Program Service Accomplishments**What is the organization's primary exempt purpose? **SEE STATEMENT 5**

All organizations must describe their exempt purpose achievements in a clear and concise manner. State the number of clients served, publications issued, etc. Discuss achievements that are not measurable (Section 501(c)(3) and (4) organizations and 4947(a)(1) nonexempt charitable trusts must also enter the amount of grants and allocations to others.)

**Program Service Expenses**  
 (Required for 501(c)(3) and (4) orgs., and 4947(a)(1) trusts, but optional for others)

<b>a</b>	<b>LITIGATIONS AND BRIEFS TO PROTECT CONSTITUTIONAL RIGHTS OF CLIENTS; EDUCATION THROUGH BROCHURES, EVENTS, MEDIA AND SPEECHES NATIONWIDE; TRAINING OF LAW STUDENTS AND UNDERGRADUATES.</b>	(Grants and allocations \$ _____)	4,452,055.
<b>b</b>		(Grants and allocations \$ _____)	
<b>c</b>		(Grants and allocations \$ _____)	
<b>d</b>		(Grants and allocations \$ _____)	
<b>e</b>	Other program services (attach schedule)	(Grants and allocations \$ _____)	
<b>f</b>	Total of Program Service Expenses (should equal line 44, column (B), Program services)		4,452,055.

**Part IV Balance Sheets**

**Note:** Where required, attached schedules and amounts within the description column should be for end-of-year amounts only

		(A) Beginning of year		(B) End of year
<b>Assets</b>	45 Cash - non-interest-bearing	1,028,769.	45	583,796.
	46 Savings and temporary cash investments		46	
	47 a Accounts receivable	13,501.		
	b Less: allowance for doubtful accounts		47c	13,501.
	48 a Pledges receivable	397,400.		
	b Less: allowance for doubtful accounts		48c	397,400.
	49 Grants receivable		49	
	50 Receivables from officers, directors, trustees, and key employees		50	
	51 a Other notes and loans receivable			
	b Less: allowance for doubtful accounts		51c	
	52 Inventories for sale or use		52	
	53 Prepaid expenses and deferred charges	145,330.	53	144,727.
	54 Investments - securities <b>STMT 6</b> <input type="checkbox"/> Cost <input checked="" type="checkbox"/> FMV	5,381,826.	54	8,000,925.
	55 a Investments - land, buildings, and equipment basis			
	b Less: accumulated depreciation		55c	
56 Investments - other <b>SEE STATEMENT 7</b>	835,000.	56	685,000.	
57 a Land, buildings, and equipment basis	985,769.			
b Less: accumulated depreciation <b>STMT 8</b>	749,512.	57c	236,257.	
58 Other assets (describe <input type="checkbox"/> )		58		
59 <b>Total assets</b> (add lines 45 through 58) (must equal line 74)	8,145,594.	59	10,061,606.	
<b>Liabilities</b>	60 Accounts payable and accrued expenses	151,637.	60	105,407.
	61 Grants payable		61	
	62 Deferred revenue		62	
	63 Loans from officers, directors, trustees, and key employees		63	
	64 a Tax-exempt bond liabilities		64a	
	b Mortgages and other notes payable		64b	
	65 Other liabilities (describe <input type="checkbox"/> <b>CAPITAL LEASE OBLIGATION</b> )	68,637.	65	49,312.
66 <b>Total liabilities</b> (add lines 60 through 65)	220,274.	66	154,719.	
<b>Net Assets or Fund Balances</b>	<b>Organizations that follow SFAS 117, check here</b> <input checked="" type="checkbox"/> and complete lines 67 through 69 and lines 73 and 74			
	67 Unrestricted	7,246,110.	67	8,786,685.
	68 Temporarily restricted	679,210.	68	1,120,202.
	69 Permanently restricted		69	
	<b>Organizations that do not follow SFAS 117, check here</b> <input type="checkbox"/> and complete lines 70 through 74			
	70 Capital stock, trust principal, or current funds		70	
	71 Paid-in or capital surplus, or land, building, and equipment fund		71	
	72 Retained earnings, endowment, accumulated income, or other funds		72	
	73 <b>Total net assets or fund balances</b> (add lines 67 through 69 or lines 70 through 72, column (A) must equal line 19, column (B) must equal line 21)	7,925,320.	73	9,906,887.
	74 <b>Total liabilities and net assets / fund balances</b> (add lines 66 and 73)	8,145,594.	74	10,061,606.

Form 990 is available for public inspection and, for some people, serves as the primary or sole source of information about a particular organization. How the public perceives an organization in such cases may be determined by the information presented on its return. Therefore, please make sure the return is complete and accurate and fully describes, in Part III, the organization's programs and accomplishments.

<b>Part IV-B</b>	<b>Reconciliation of Expenses per Audited Financial Statements with Expenses per Return</b>
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<b>a</b>	Total expenses and losses per audited financial statements	<b>a</b>	5,675,461.
<b>b</b>	Amounts included on line <b>a</b> but not on line 17, Form 990	<b>b</b>	0.
<b>(1)</b>	Donated services and use of facilities \$ _____	<b>c</b>	5,675,461.
<b>(2)</b>	Prior year adjustments reported on line 20, Form 990 \$ _____	<b>d</b>	0.
<b>(3)</b>	Losses reported on line 20, Form 990 \$ _____	<b>e</b>	5,675,461.
<b>(4)</b>	Other (specify) \$ _____		
	Add amounts on lines <b>(1)</b> through <b>(4)</b>		
<b>c</b>	Line <b>a</b> minus line <b>b</b>		
<b>d</b>	Amounts included on line 17, Form 990 but not on line <b>a</b>		
<b>(1)</b>	Investment expenses not included on line 6b, Form 990 \$ _____		
<b>(2)</b>	Other (specify) \$ _____		
	Add amounts on lines <b>(1)</b> and <b>(2)</b>		
<b>e</b>	Total expenses per line 17, Form 990 (line <b>c</b> plus line <b>d</b> )		

[illegible]

Form 990 (2003)

Yes	No
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Located at ► 1717 PENNSYLVANIA AVE, NW, WASHINGTON, DC ZIP + 4 ► 20006

▶ | 92 | ▶ ☐ N/A

**Part VII Analysis of Income-Producing Activities** (See page 33 of the instructions.)

Note: Enter gross amounts unless otherwise indicated.

	Unrelated business income		Excluded by section 512, 513, or 514		(E) Related or exempt function income
	(A) Business code	(B) Amount	(C) Exclu- sion code	(D) Amount	
93 Program service revenue					
a ATTORNEY FEES					157,760.
b HONORARIA					13,125.
c MISCELLANEOUS					15,944.
d					
e					
f Medicare/Medicaid payments					
g Fees and contracts from government agencies					
94 Membership dues and assessments					
95 Interest on savings and temporary cash investments			14	166,030.	
96 Dividends and interest from securities					
97 Net rental income or (loss) from real estate					
a debt-financed property					
b not debt-financed property					
98 Net rental income or (loss) from personal property					
99 Other investment income					
100 Gain or (loss) from sales of assets other than inventory			18	<9,037.>	
101 Net income or (loss) from special events					
102 Gross profit or (loss) from sales of inventory					
103 Other revenue					
a					
b					
c					
d					
e					
104 Subtotal (add columns (B), (D), and (E))		0.		156,993.	186,829.
105 Total (add line 104, columns (B), (D), and (E))					343,822.

Note: Line 105 plus line 1d, Part I, should equal the amount on line 12, Part I.

**Part VIII Relationship of Activities to the Accomplishment of Exempt Purposes** (See page 34 of the instructions.)

Line No. Explain how each activity for which income is reported in column (E) of Part VII contributed importantly to the accomplishment of the organization's exempt purposes (other than by providing funds for such purposes)

SEE STATEMENT 11

**Part IX Information Regarding Taxable Subsidiaries and Disregarded Entities** (See page 34 of the instructions.)

(A) Name, address, and EIN of corporation, partnership, or disregarded entity	(B) Percentage of ownership interest	(C) Nature of activities	(D) Total income	(E) End-of-year assets
N/A	%			
	%			
	%			
	%			

**Part X Information Regarding Transfers Associated with Personal Benefit Contracts** (See page 34 of the instructions.)

(a) Did the organization, during the year, receive any funds, directly or indirectly, to pay premiums on a personal benefit contract?

☐ Yes ☒ No

(b) Did the organization, during the year, pay premiums, directly or indirectly, on a personal benefit contract?

☐ Yes ☒ No

Note: If "Yes" to (b), file Form 8870 and Form 4720 (see instructions).

Please Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge.

Signature of officer: William H. Mellor Date: 11/16/04 Type or print name and title: WILLIAM H. MELLOR PRESIDENT

Paid Preparer's Use Only

Preparer's signature: [Signature] Date: 11/15/04 Check if self-employed: ☐ Preparer's SSN or PTIN: \_\_\_\_\_

Firm's name (or yours if self-employed), address, and ZIP + 4: RUBINO & MCGEEHIN, CHARTERED  
6905 ROCKLEDGE DRIVE, SUITE 700  
BETHESDA, MD 20817

EIN: \_\_\_\_\_ Phone no: 301-564-3636

**SCHEDULE A**  
**(Form 990 or 990-EZ)**

Department of the Treasury  
Internal Revenue Service

**Organization Exempt Under Section 501(c)(3)**

(Except Private Foundation) and Section 501(e), 501(f), 501(k),  
501(n), or Section 4947(a)(1) Nonexempt Charitable Trust

**Supplementary Information-(See separate instructions.)**

► **MUST be completed by the above organizations and attached to their Form 990 or 990-EZ**

OMB No 1545-0047

**2003**

Name of the organization

INSTITUTE FOR JUSTICE

Employer identification number

52 1744337

**Part I Compensation of the Five Highest Paid Employees Other Than Officers, Directors, and Trustees**

(See page 1 of the instructions List each one If there are none, enter "None")

(a) Name and address of each employee paid more than \$50,000	(b) Title and average hours per week devoted to position	(c) Compensation	(d) Contributions to employee benefit plans & deferred compensation	(e) Expense account and other allowances
CLINT BOLICK ----- 1717 PENNSYLVANIA AVE; WASHINGTON, DC	VP NAT. DIR 40 HRS PER WK	179,866.	45,195.	
JOSEPH HOLT ----- 1717 PENNSYLVANIA AVE; WASHINGTON, DC	DR/IJ CLINIC 40 HRS PER WK	122,916.	8,568.	
SCOTT BULLOCK ----- 1717 PENNSYLVANIA AVE; WASHINGTON, DC	SR. ATTORNEY 40 HRS PER WK	111,100.	17,961.	
JOHN KRAMER ----- 1717 PENNSYLVANIA AVE; WASHINGTON, DC	VP OF COMM 40 HRS PER WK	133,127.	29,332.	
DANA BERLINER ----- 1717 PENNSYLVANIA AVE; WASHINGTON, DC	SR. ATTORNEY 40 HRS PER WK	117,167.	17,615.	1,196.
Total number of other employees paid over \$50,000 ►	16			

**Part II Compensation of the Five Highest Paid Independent Contractors for Professional Services**

(See page 2 of the instructions List each one (whether individuals or firms) If there are none, enter "None")

(a) Name and address of each independent contractor paid more than \$50,000	(b) Type of service	(c) Compensation
NONE ----- ----- ----- ----- ----- ----- ----- ----- ----- -----		
Total number of others receiving over \$50,000 for professional services ►	0	

	Yes	No
1. The company has a policy on the use of social media.		
2. The company has a policy on the use of mobile devices.		
3. The company has a policy on the use of personal email accounts.		
4. The company has a policy on the use of personal social media accounts.		
5. The company has a policy on the use of personal mobile devices.		
6. The company has a policy on the use of personal email accounts.		
7. The company has a policy on the use of personal social media accounts.		
8. The company has a policy on the use of personal mobile devices.		
9. The company has a policy on the use of personal email accounts.		
10. The company has a policy on the use of personal social media accounts.		
11. The company has a policy on the use of personal mobile devices.		
12. The company has a policy on the use of personal email accounts.		
13. The company has a policy on the use of personal social media accounts.		
14. The company has a policy on the use of personal mobile devices.		
15. The company has a policy on the use of personal email accounts.		
16. The company has a policy on the use of personal social media accounts.		
17. The company has a policy on the use of personal mobile devices.		
18. The company has a policy on the use of personal email accounts.		
19. The company has a policy on the use of personal social media accounts.		
20. The company has a policy on the use of personal mobile devices.		

- 1 During the year, has the organization attempted to influence national, state, or local legislation, including any attempt to influence public opinion on a legislative matter or referendum? If "Yes," enter the total expenses paid or incurred in connection with the lobbying activities ► \$ \_\_\_\_\_ \$ 99,660. (Must equal amounts on line 38, Part VI-A, or line i of Part VI-B )
- Organizations that made an election under section 501(h) by filing Form 5768 must complete Part VI-A Other organizations checking "Yes," must complete Part VI-B AND attach a statement giving a detailed description of the lobbying activities
- 2 During the year, has the organization, either directly or indirectly, engaged in any of the following acts with any substantial contributors, trustees, directors, officers, creators, key employees, or members of their families, or with any taxable organization with which any such person is affiliated as an officer, director, trustee, majority owner, or principal beneficiary? (If the answer to any question is "Yes," attach a detailed statement explaining the transactions )
- a Sale, exchange, or leasing of property?
- b Lending of money or other extension of credit?
- c Furnishing of goods, services, or facilities?
- d Payment of compensation (or payment or reimbursement of expenses if more than \$1,000)? SEE PART V, FORM 990
- e Transfer of any part of its income or assets?
- 3 a Do you make grants for scholarships, fellowships, student loans, etc ? (If "Yes," attach an explanation of how you determine that recipients qualify to receive payments )
- b Do you have a section 403(b) annuity plan for your employees?
- 4 Did you maintain any separate account for participating donors where donors have the right to provide advice on the use or distribution of funds?

The organization is not a private foundation because it is (Please check only **ONE** applicable box )

- 5 ☐ A church, convention of churches, or association of churches Section 170(b)(1)(A)(i)
- 6 ☐ A school Section 170(b)(1)(A)(ii) (Also complete Part V )
- 7 ☐ A hospital or a cooperative hospital service organization Section 170(b)(1)(A)(iii)
- 8 ☐ A Federal, state, or local government or governmental unit Section 170(b)(1)(A)(v)
- 9 ☐ A medical research organization operated in conjunction with a hospital Section 170(b)(1)(A)(iii) Enter the hospital's name, city, and state ► \_\_\_\_\_
- 10 ☐ An organization operated for the benefit of a college or university owned or operated by a governmental unit Section 170(b)(1)(A)(iv) (Also complete the **Support Schedule** in Part IV-A )
- 11a ☒ An organization that normally receives a substantial part of its support from a governmental unit or from the general public Section 170(b)(1)(A)(vi) (Also complete the **Support Schedule** in Part IV-A )
- 11b ☐ A community trust Section 170(b)(1)(A)(vi) (Also complete the **Support Schedule** in Part IV-A )
- 12 ☐ An organization that normally receives: (1) more than 33 1/3% of its support from contributions, membership fees, and gross receipts from activities related to its charitable, etc., functions - subject to certain exceptions, and (2) no more than 33 1/3% of its support from gross investment income and unrelated business taxable income (less section 511 tax) from businesses acquired by the organization after June 30, 1975 See section 509(a)(2) (Also complete the **Support Schedule** in Part IV-A )
- 13 ☐ An organization that is not controlled by any disqualified persons (other than foundation managers) and supports organizations described in (1) lines 5 through 12 above, or (2) section 501(c)(4), (5), or (6), if they meet the test of section 509(a)(2) (See section 509(a)(3) )

Provide the following information about the supported organizations (See page 5 of the instructions )

(a) Name(s) of supported organization(s)	(b) Line number from above

- 14 ☐ An organization organized and operated to test for public safety Section 509(a)(4) (See page 6 of the instructions )



**Part IV-A****Support Schedule** (Complete only if you checked a box on line 10, 11, or 12.) Use cash method of accounting.

Note: You may use the worksheet in the instructions for converting from the accrual to the cash method of accounting.

Calendar year (or fiscal year beginning in)	(a) 2002	(b) 2001	(c) 2000	(d) 1999	(e) Total
15 Gifts, grants, and contributions received (Do not include unusual grants. See line 28.)	6,028,230.	5,616,962.	5,317,720.	4,977,680.	21,940,592.
16 Membership fees received					
17 Gross receipts from admissions, merchandise sold or services performed, or furnishing of facilities in any activity that is related to the organization's charitable, etc., purpose	141,089.	186,117.	7,689.	104,674.	439,569.
18 Gross income from interest, dividends, amounts received from payments on securities loans (section 512(a)(5)), rents, royalties, and unrelated business taxable income (less section 511 taxes) from businesses acquired by the organization after June 30, 1975	146,340.	143,684.	98,314.	144,960.	533,298.
19 Net income from unrelated business activities not included in line 18					
20 Tax revenues levied for the organization's benefit and either paid to it or expended on its behalf					
21 The value of services or facilities furnished to the organization by a governmental unit without charge. Do not include the value of services or facilities generally furnished to the public without charge.					
22 Other income. Attach a schedule. Do not include gain or (loss) from sale of capital assets.					
23 Total of lines 15 through 22	6,315,659.	5,946,763.	5,423,723.	5,227,314.	22,913,459.
24 Line 23 minus line 17	6,174,570.	5,760,646.	5,416,034.	5,122,640.	22,473,890.
25 Enter 1% of line 23	63,157.	59,468.	54,237.	52,273.	
26 Organizations described on lines 10 or 11: a Enter 2% of amount in column (e), line 24					26a 449,478.
b Prepare a list for your records to show the name of and amount contributed by each person (other than a governmental unit or publicly supported organization) whose total gifts for 1999 through 2002 exceeded the amount shown in line 26a. Do not file this list with your return. Enter the total of all these excess amounts					26b 2,587,590.
c Total support for section 509(a)(1) test. Enter line 24, column (e)					26c 22,473,890.
d Add: Amounts from column (e) for lines 18 533,298. 19 22 2,587,590.					26d 3,120,888.
e Public support (line 26c minus line 26d total)					26e 19,353,002.
f Public support percentage (line 26e (numerator) divided by line 26c (denominator))					26f 86.1133%
27 Organizations described on line 12: a For amounts included in lines 15, 16, and 17 that were received from a "disqualified person," prepare a list for your records to show the name of, and total amounts received in each year from, each "disqualified person." Do not file this list with your return. Enter the sum of such amounts for each year	(2002) N/A	(2001) N/A	(2000) N/A	(1999) N/A	
b For any amount included in line 17 that was received from each person (other than "disqualified persons"), prepare a list for your records to show the name of, and amount received for each year, that was more than the larger of (1) the amount on line 25 for the year or (2) \$5,000. (Include in the list organizations described in lines 5 through 11, as well as individuals.) Do not file this list with your return. After computing the difference between the amount received and the larger amount described in (1) or (2), enter the sum of these differences (the excess amounts) for each year	(2002) N/A	(2001) N/A	(2000) N/A	(1999) N/A	
c Add: Amounts from column (e) for lines 15 16 17 20 21					27c N/A
d Add: Line 27a total and line 27b total					27d N/A
e Public support (line 27c total minus line 27d total)					27e N/A
f Total support for section 509(a)(2) test. Enter amount on line 23, column (e)					27f N/A
g Public support percentage (line 27e (numerator) divided by line 27f (denominator))					27g N/A %
h Investment income percentage (line 18, column (e) (numerator) divided by line 27f (denominator))					27h N/A %

28 Unusual Grants: For an organization described in line 10, 11, or 12 that received any unusual grants during 1999 through 2002, prepare a list for your records to show, for each year, the name of the contributor, the date and amount of the grant, and a brief description of the nature of the grant. Do not file this list with your return. Do not include these grants in line 15.

**Part V Private School Questionnaire** (See page 7 of the instructions )

N/A

(To be completed ONLY by schools that checked the box on line 6 in Part IV)

	Yes	No
<b>29</b> Does the organization have a racially nondiscriminatory policy toward students by statement in its charter, bylaws, other governing instrument, or in a resolution of its governing body?		
<b>30</b> Does the organization include a statement of its racially nondiscriminatory policy toward students in all its brochures, catalogues, and other written communications with the public dealing with student admissions, programs, and scholarships?		
<b>31</b> Has the organization publicized its racially nondiscriminatory policy through newspaper or broadcast media during the period of solicitation for students, or during the registration period if it has no solicitation program, in a way that makes the policy known to all parts of the general community it serves? If "Yes," please describe, if "No," please explain (If you need more space, attach a separate statement )		
<hr/> <hr/> <hr/>		
<b>32</b> Does the organization maintain the following		
<b>a</b> Records indicating the racial composition of the student body, faculty, and administrative staff?		
<b>b</b> Records documenting that scholarships and other financial assistance are awarded on a racially nondiscriminatory basis?		
<b>c</b> Copies of all catalogues, brochures, announcements, and other written communications to the public dealing with student admissions, programs, and scholarships?		
<b>d</b> Copies of all material used by the organization or on its behalf to solicit contributions? If you answered "No" to any of the above, please explain. (If you need more space, attach a separate statement )		
<hr/> <hr/>		
<b>33</b> Does the organization discriminate by race in any way with respect to		
<b>a</b> Students' rights or privileges?		
<b>b</b> Admissions policies?		
<b>c</b> Employment of faculty or administrative staff?		
<b>d</b> Scholarships or other financial assistance?		
<b>e</b> Educational policies?		
<b>f</b> Use of facilities?		
<b>g</b> Athletic programs?		
<b>h</b> Other extracurricular activities? If you answered "Yes" to any of the above, please explain (If you need more space, attach a separate statement )		
<hr/> <hr/>		
<b>34 a</b> Does the organization receive any financial aid or assistance from a governmental agency?		
<b>b</b> Has the organization's right to such aid ever been revoked or suspended? If you answered "Yes" to either 34a or b, please explain using an attached statement		
<b>35</b> Does the organization certify that it has complied with the applicable requirements of sections 4.01 through 4.05 of Rev. Proc. 75-50, 1975-2 C.B. 587, covering racial nondiscrimination? If "No," attach an explanation		

**Part VI-A Lobbying Expenditures by Electing Public Charities** (See page 9 of the instructions.)

(To be completed ONLY by an eligible organization that filed Form 5768)

Check ☒ **a** ☐ if the organization belongs to an affiliated groupCheck ☐ **b** ☐ if you checked "a" and "limited control" provisions apply**Limits on Lobbying Expenditures**

(The term "expenditures" means amounts paid or incurred.)

(a)  
Affiliated group  
totals(b)  
To be completed for ALL  
electing organizations

		N/A													
36	Total lobbying expenditures to influence public opinion (grassroots lobbying)	36	99,660.												
37	Total lobbying expenditures to influence a legislative body (direct lobbying)	37	0.												
38	Total lobbying expenditures (add lines 36 and 37)	38	99,660.												
39	Other exempt purpose expenditures	39	5,575,801.												
40	Total exempt purpose expenditures (add lines 38 and 39)	40	5,675,461.												
41	Lobbying nontaxable amount Enter the amount from the following table -														
	<table><tr><td><b>If the amount on line 40 is -</b></td><td><b>The lobbying nontaxable amount is -</b></td></tr><tr><td>Not over \$500,000</td><td>20% of the amount on line 40</td></tr><tr><td>Over \$500,000 but not over \$1,000,000</td><td>\$100,000 plus 15% of the excess over \$500,000</td></tr><tr><td>Over \$1,000,000 but not over \$1,500,000</td><td>\$175,000 plus 10% of the excess over \$1,000,000</td></tr><tr><td>Over \$1,500,000 but not over \$17,000,000</td><td>\$225,000 plus 5% of the excess over \$1,500,000</td></tr><tr><td>Over \$17,000,000</td><td>\$1,000,000</td></tr></table>	<b>If the amount on line 40 is -</b>	<b>The lobbying nontaxable amount is -</b>	Not over \$500,000	20% of the amount on line 40	Over \$500,000 but not over \$1,000,000	\$100,000 plus 15% of the excess over \$500,000	Over \$1,000,000 but not over \$1,500,000	\$175,000 plus 10% of the excess over \$1,000,000	Over \$1,500,000 but not over \$17,000,000	\$225,000 plus 5% of the excess over \$1,500,000	Over \$17,000,000	\$1,000,000		
<b>If the amount on line 40 is -</b>	<b>The lobbying nontaxable amount is -</b>														
Not over \$500,000	20% of the amount on line 40														
Over \$500,000 but not over \$1,000,000	\$100,000 plus 15% of the excess over \$500,000														
Over \$1,000,000 but not over \$1,500,000	\$175,000 plus 10% of the excess over \$1,000,000														
Over \$1,500,000 but not over \$17,000,000	\$225,000 plus 5% of the excess over \$1,500,000														
Over \$17,000,000	\$1,000,000														
		41	433,773.												
42	Grassroots nontaxable amount (enter 25% of line 41)	42	108,443.												
43	Subtract line 42 from line 36 Enter -0- if line 42 is more than line 36	43	0.												
44	Subtract line 41 from line 38 Enter -0- if line 41 is more than line 38	44	0.												
Caution: If there is an amount on either line 43 or line 44, you must file Form 4720.															

Caution: If there is an amount on either line 43 or line 44, you must file Form 4720.

**4-Year Averaging Period Under Section 501(h)**

(Some organizations that made a section 501(h) election do not have to complete all of the five columns below. See the instructions for lines 45 through 50 on page 11 of the instructions.)

	Lobbying Expenditures During 4-Year Averaging Period				
Calendar year (or fiscal year beginning in) ►	(a) 2003	(b) 2002	(c) 2001	(d) 2000	(e) Total
45 Lobbying nontaxable amount	433,773.	412,545.	387,270.	362,632.	1,596,220.
46 Lobbying ceiling amount (150% of line 45(e))					2,394,330.
47 Total lobbying expenditures	99,660.	9,098.	2,611.	16,742.	128,111.
48 Grassroots nontaxable amount	108,443.	103,136.	96,818.	90,658.	399,055.
49 Grassroots ceiling amount (150% of line 48(e))					598,583.
50 Grassroots lobbying expenditures	99,660.	9,098.	2,611.	16,742.	128,111.

**Part VI-B Lobbying Activity by Nonelecting Public Charities**

(For reporting only by organizations that did not complete Part VI-A) (See page 12 of the instructions.)

N/A

During the year, did the organization attempt to influence national, state or local legislation, including any attempt to influence public opinion on a legislative matter or referendum, through the use of

- a Volunteers
- b Paid staff or management (Include compensation in expenses reported on lines c through h.)
- c Media advertisements
- d Mailings to members, legislators, or the public
- e Publications, or published or broadcast statements
- f Grants to other organizations for lobbying purposes
- g Direct contact with legislators, their staffs, government officials, or a legislative body
- h Rallies, demonstrations, seminars, conventions, speeches, lectures, or any other means
- i Total lobbying expenditures (Add lines c through h.)

Yes	No	Amount
		0.

If "Yes" to any of the above, also attach a statement giving a detailed description of the lobbying activities



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FORM 990	GAIN (LOSS) FROM PUBLICLY TRADED SECURITIES	STATEMENT	1
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DESCRIPTION	GROSS SALES PRICE	COST OR OTHER BASIS	EXPENSE OF SALE	NET GAIN OR (LOSS)
SALE OF INVESTMENTS	436,440.	432,272.	0.	4,168.
TO FORM 990, PART I, LINE 8	436,440.	432,272.	0.	4,168.

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FORM 990	GAIN (LOSS) FROM SALE OF OTHER ASSETS	STATEMENT	2
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DESCRIPTION	DATE ACQUIRED	DATE SOLD	METHOD ACQUIRED	
DISPOSAL OF EQUIPMENT	VARIOUS	VARIOUS	PURCHASED	
NAME OF BUYER	GROSS SALES PRICE	COST OR OTHER BASIS	EXPENSE OF SALE	DEPREC
	0.	71,448.	0.	58,243.
TO FM 990, PART I, LN 8		71,448.	0.	58,243.
				NET GAIN OR (LOSS)
				<13,205.>
				<13,205.>

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FORM 990	OTHER CHANGES IN NET ASSETS OR FUND BALANCES	STATEMENT	3
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DESCRIPTION	AMOUNT
UNREALIZED GAINS ON INVESTMENTS	1,150,482.
TOTAL TO FORM 990, PART I, LINE 20	1,150,482.

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FORM 990	OTHER EXPENSES	STATEMENT	4
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DESCRIPTION	(A) TOTAL	(B) PROGRAM SERVICES	(C) MANAGEMENT AND GENERAL	(D) FUNDRAISING
COURT FEES	6,798.	6,798.		
INDEPENDENT CONTRACTORS	276,797.	250,352.	17,028.	9,417.
MEALS	27,916.	23,137.	2,525.	2,254.
BOOKS & SUBSCRIPTIONS	24,958.	20,731.	1,354.	2,873.
INSURANCE	69,047.	58,003.	9,265.	1,779.
MAILING LIST RENTAL	9,155.	140.		9,015.
TRANSCRIPTS AND COURT REPORTERS	39,508.	39,508.		
MEDIA RELATIONS	27,200.	27,110.		90.
ADVERTISING	29,845.	29,845.		
EVENTS	107,158.	87,365.	6,911.	12,882.
MISCELLANEOUS	41,882.	2,915.	37,914.	1,053.
LEGAL RESEARCH TOOLS	82,736.	82,736.		
BANK CHARGES AND INTEREST	20,900.		20,900.	

REPAIR & MAINTENANCE	14,006.		14,006.	
PROFESSIONAL DUES/CLE FEES	27,882.	23,272.	244.	4,366.
TOTAL TO FM 990, LN 43	805,788.	651,912.	110,147.	43,729.

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FORM 990	STATEMENT OF ORGANIZATION'S PRIMARY EXEMPT PURPOSE	STATEMENT	5
	PART III		

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## EXPLANATION

TO PROTECT THE CONSTITUTIONAL RIGHTS OF CLIENTS AND TO EDUCATE THE PUBLIC THROUGH BROCHURES, EVENTS, MEDIA, AND SPEECHES NATIONWIDE.

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FORM 990	NON-GOVERNMENT SECURITIES	STATEMENT	6
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SECURITY DESCRIPTION	CORPORATE STOCKS	CORPORATE BONDS	OTHER PUBLICLY TRADED SECURITIES	OTHER SECURITIES	TOTAL NON-GOV'T SECURITIES
CORPORATE DEBT VANGUARD GROUP (MUTUAL FUNDS)		305,495.			305,495.
MONEY MARKET FUNDS				7482669.	7,482,669.
				212,761.	212,761.
TO 990, LN 54 COL B		305,495.		7695430.	8,000,925.

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FORM 990	OTHER INVESTMENTS	STATEMENT	7
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DESCRIPTION	VALUATION METHOD	AMOUNT
CERTIFICATES OF DEPOSIT	COST	685,000.
TOTAL TO FORM 990, PART IV, LINE 56, COLUMN B		685,000.

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FORM 990	DEPRECIATION OF ASSETS NOT HELD FOR INVESTMENT	STATEMENT	8
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DESCRIPTION	COST OR OTHER BASIS	ACCUMULATED DEPRECIATION	BOOK VALUE
FURNITURE AND EQUIPMENT	374,478.	282,086.	92,392.
COMPUTER AND SOFTWARE	346,431.	271,098.	75,333.
LEASEHOLD IMPROVEMENTS	264,860.	196,328.	68,532.
TOTAL TO FORM 990, PART IV, LN 57	985,769.	749,512.	236,257.

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FORM 990	PART V - LIST OF OFFICERS, DIRECTORS, TRUSTEES AND KEY EMPLOYEES	STATEMENT	9
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NAME AND ADDRESS	TITLE AND AVRG HRS/WK	COMPEN- SATION	EMPLOYEE BEN PLAN CONTRIB	EXPENSE ACCOUNT
DAVID B. KENNEDY 1717 PENNSYLVANIA AVENUE, NW WASHINGTON, DC	CHAIRMAN 1-2	0.	0.	0.
MARK BABUNOVIC 1717 PENNSYLVANIA AVENUE, NW WASHINGTON, DC	MEMBER 1-2	0.	0.	0.
ARTHUR DANTCHIK 1717 PENNSYLVANIA AVENUE, NW WASHINGTON, DC	MEMBER 1-2	0.	0.	0.
JAMES LINTOTT 1717 PENNSYLVANIA AVENUE, NW WASHINGTON, DC	MEMBER 1-2	0.	0.	0.
WILLIAM H. MELLOR 1717 PENNSYLVANIA AVENUE, NW WASHINGTON, DC	PRES & GENERAL COUNSEL 40	302,349.	50,802.	0.
DEB SIMPSON 1717 PENNSYLVANIA AVENUE, NW WASHINGTON, DC	MANAGING DIR. & SEC'Y 40	102,913.	12,200.	0.
GERRIT WORMHOUDT 1717 PENNSYLVANIA AVENUE, NW WASHINGTON, DC	MEMBER 1-2	0.	0.	0.



## INSTITUTE FOR JUSTICE

52-1744337

ROBERT A. LEVY 1717 PENNSYLVANIA AVENUE, NW WASHINGTON, DC	MEMBER 1-2	0.	0.	0.
ABIGAIL THERNSTROM 1717 PENNSYLVANIA AVENUE, NW WASHINGTON, DC	MEMBER 1-2	0.	0.	0.
STEPHEN W. MODZELEWSKI 1717 PENNSYLVANIA AVENUE, NW WASHINGTON, DC	MEMBER 1-2	0.	0.	0.
TOTALS INCLUDED ON FORM 990, PART V		405,262.	63,002.	0.

FORM 990	LIST OF STATES RECEIVING COPY OF RETURN PART VI, LINE 90	STATEMENT 10
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## STATES

AL, AK, AZ, AR, CA, CT, DC, FL, GA, KS, KY, ME, MD, MA, MI, MN, MS, NH, NJ,  
NM, NC, ND, OH, OK, OR, PA, RI, TN, UT, WA, WV, WI, NY, SC, VA, IL, MO

FORM 990	PART VIII - RELATIONSHIP OF ACTIVITIES TO ACCOMPLISHMENT OF EXEMPT PURPOSES	STATEMENT 11
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LINE	EXPLANATION OF RELATIONSHIP OF ACTIVITIES
93A	ATTORNEY FEES ARE ACCEPTED WHEN AN AMOUNT IS AWARDED BY THE COURT AND PAID BY THE OPPOSING PARTY OR WHEN AN AMOUNT IS AWARDED BY STATUE.
93B	SPEECHES PERTAINING TO THE INSTITUTE'S EXEMPT PURPOSE BY PROVIDING A MEANS OF EDUCATING THE PUBLIC.
93C	MISCELLANEOUS INCOME DIRECTLY RELATED TO THE INSTITUTE'S EXEMPT PURPOSE BY PROVIDING A MEANS TO PROTECT THE CONSTITUTIONAL RIGHTS OF CLIENTS.

## INSTITUTE FOR JUSTICE - CASE UPDATE

June 2004

### EDUCATION

#### **Holmes v. Bush; Florida Education Association v. State Board of Education**

(Florida School Choice)

Court: First District Court of Appeal

IJ Attorneys: Clark Neily

Local Counsel: Ken Sukhia

In this case we represent a group of parents whose children are attending both religious and nonreligious private schools using state vouchers provided by the Opportunity Scholarship program. Although the plaintiffs initially challenged the program on a variety of statutory and constitutional grounds, all of their claims save one have been dropped or dismissed. However, in August of 2002, the trial court granted summary judgment in favor of the plaintiffs and declared the program unconstitutional under Article I, Section 3 of the state constitution—Florida's Blaine Amendment.

The trial court's decision was automatically stayed (allowing the program to continue and even to expand) pending appeal. The 1<sup>st</sup> District Court of Appeals heard oral argument on March 18, 2003, and we received a ruling August 16, 2004, which affirmed the trial court in a 2-1 decision. The 1<sup>st</sup> DCA certified the case for review by the Florida Supreme Court, which will likely hear the case this fall.

We are continuing to mount vigorous media and outreach campaigns to defend the program in the court of public opinion while the case is on appeal.

#### **Winn v. Hibbs** (Arizona Chapter School Choice II)

Court: U.S. District Court for District of Arizona

IJ Attorneys: Tim Keller and Clint Bolick

Local Counsel: No longer necessary

The U.S. Supreme Court upheld the Ninth Circuit's reversal of the district court's dismissal of this ACLU First Amendment challenge to the Arizona scholarship tax credit. The district court will resume jurisdiction imminently. The district court granted IJ's motion to intervene prior to the U.S. Supreme Court's decision to grant the petition for review and we had filed a motion to dismiss the case on *res judicata* grounds (i.e., the same parties already litigated the case to conclusion) at that time. IJ's motion to dismiss will still be pending once the District Court assumes jurisdiction. Clint Bolick will serve *of counsel* in this case.

**Anderson, et al. v. Durham, et al.** (Maine School Choice)

Court: Superior Court Cumberland County

IJ Attorneys: Dick Komer and Clark Neily

Local counsel: Jeffrey Edwards

On September 18, 2002, we filed a new lawsuit challenging Maine's exclusion of religious schools from its local-option school choice program. Under that program, school districts that do not operate public schools (usually high schools) can pay tuition for their students to attend other districts' public schools or private schools. In 1981, Maine eliminated the participation of religious schools, with the belief that the federal Establishment Clause required their exclusion. IJ challenged this exclusion in the *Bagley* case, in which the Maine Supreme Court held that the exclusion was in fact necessary to avoid an Establishment Clause violation. After the U.S. Supreme Court upheld the Cleveland voucher program, the Maine Attorney General issued an opinion letter instructing that districts continue to exclude the choice of religious schools.

IJ represents eight families in three tuitioning towns that send their children to two religious high schools, one Catholic and the other Seventh Day Adventist. The defendants are the Maine Education Department and its commissioner and the three town school departments and their superintendents. Our position is that *Zelman* makes clear that the Establishment Clause would not be violated by the inclusion of religious choices in Maine's program and that the continued exclusion of those choices violates our clients' federal constitutional rights.

The Maine Civil Liberties Union and the Maine Education Association (the NEA's state affiliate) have intervened on behalf of some taxpayers as they did (with our consent) in the *Bagley* litigation. The case is now assigned to Justice Robert Crowley. The three town school districts moved to be dismissed as they did in *Bagley* on the basis that they are merely following the state law. The judge granted their motion on May 14th. Cross motions for summary judgment were filed June 4, 2004, opposition briefs on July 1, and reply briefs on July 12, with oral argument on the cross motions set for September 3rd.

**Colorado Congress of Parents and Teachers, et al. v. Colorado** (Colorado School Choice)

Court: Denver County District Court

IJ Attorneys: Chip Mellor and Dick Komer

A group of school teachers, tax payers, and non-profit groups represented by NEA attorneys filed a challenge on May 20, 2003 to the Colorado Opportunity Contract Pilot Program. The program allowed low-income children in at least 11 poorly performing districts to receive state funding to attend a participating private school of their choice. The program was open to all low-income students who live in these districts, but children who are in the fourth grade and higher could only participate if they were also doing poorly academically.

The program had the potential to be the largest school choice program in the nation. In its first year, the 2004-2005 school year, one percent of the total children in each district would have been allowed to participate. That percentage increased every year until 2007 where up to six percent of the students in each district would have been allowed to participate.

Consequently, as many as 20,000 students could have participated in the program in the 2007-2008 school year

The teachers' unions and their allies challenged the program under the Colorado Constitution's religion clauses. Colorado has both a compelled support clause and a Blaine Amendment.

The program was also challenged on two other state constitutional grounds as well. Plaintiffs alleged that the program constituted special legislation and that it violated a provision of the Colorado Constitution that requires instruction in the public schools be under the control of the local district

We represented 12 parents who had children eligible to participate in the program

The parties filed dispositive motions with respect to the two nonreligion state constitutional claims. On December 3, 2003, the trial court granted the plaintiffs' motion and enjoined the program, holding that it violated the local control provision of the state constitution. The court rejected our and the state's motions to stay its injunction pending appeal. The Colorado Supreme Court granted our and the state's motions that it accept direct review (i.e., allowing us to skip the intermediate step of appealing to the Colorado Court of Appeals) and that it expedite the appeal. Oral argument in the Colorado Supreme Court took place May 25. On June 28, the Court upheld the trial court's decision. Because the decision involved only state court interpretation of the state constitution without implicating any federally-protected rights no request for the U.S. Supreme Court to review the decision is possible

**Harrison, et al. v. Gregoire, et al.** (Washington Chapter School Choice)

Court: Thurston County Superior Court

IJ Attorneys: Bill Maurer and Jeanette Peterson

This lawsuit became a moving target, as the State sought to avoid Blaine Amendment issues. First, it capitulated on the administrative credential issue, allowing our client, Carolyn Harrison, to student-teach in a religious school. Then, at our hearing for a preliminary injunction, the State contended that Eastern Washington University excludes student-teaching at *all* private schools, not just religious ones. The judge was sympathetic to our case, but on the basis of factual dispute, he denied the injunction for our client, Renee Penhallurick.

To keep the case going, we filed an amended complaint adding the Washington Association of Independent Schools as a plaintiff and several universities with discriminatory policies as defendants. During the course of responding to the state's discovery requests, however, it became apparent that the State's policies were inconsistently applied and subjectively developed with regard to student teaching. Discovery demonstrated that regardless of what a state university's policies actually said, all the state universities remaining in the case had either permitted student teaching in both secular and sectarian private schools or had not permitted student teaching in *any* private schools, regardless of whether the school was sectarian or secular. In that regard, absent expensive and time-consuming discovery, it was unlikely that we would be able to demonstrate that the state consistently and clearly applied policies based on

the Blaine Amendment. Because of this, and because the passage of time had made the claims of both individual plaintiffs moot, we decided to dismiss this case. In April 2003, the Washington Chapter filed a motion to voluntarily dismiss the case, which the court granted.

One of our two plaintiffs won the right to student-teach in a religious school. The state ended its discriminatory policy.

**Genier, et al. v. Vermont** (Vermont School Choice)  
Court: U S District Court for the District of Vermont  
IJ Attorneys: Dick Komer  
Local Counsel: Orland Campbell

This case was a federal court challenge to Vermont's exclusion of the choice of religious schools from Vermont's tuitioning system for towns not operating public high schools. Our previous case challenging this exclusion in state court failed when the Vermont Supreme Court held that while the exclusion was not required by the federal Establishment Clause, it was mandated by the Vermont constitution's "compelled support" clause. Because 28 other states also have compelled support clauses in their state constitutions, we wanted to establish that the broad interpretation given to this language by the Vermont Supreme Court offends federal constitutional rights under the religion clauses, the free speech clause, and the equal protection clause.

We represented two families from tuitioning towns who send their children to two religious schools in Rutland, Vermont, as well as a taxpayer who objects to Vermont's discrimination on the basis of religion. We filed the case on March 20, 2003, and received the responses of the defendants. The parties then developed a discovery schedule, anticipating a joint stipulation of facts and future cross-motions for summary judgment.

After holding further action in this case in abeyance pending the U S Supreme court's decision in *Locke v. Davey*, we dismissed the case after *Locke* was decided. Our plaintiffs' children were no longer in religious schools, and rather than replace them with new plaintiffs, we decided that it was unwise to seek the first post-*Locke* decision from one of the most liberal district court judges in the country (William Sessions), followed by an appeal to perhaps the most unsympathetic circuit court of appeals (the Second).

### **FIRST AMENDMENT**

**Taucher, et al. v. Born, et al.** (First Amendment CFTC challenge)  
Court: U S District Court for the District of Columbia  
IJ Attorneys: Scott Bullock, Steve Simpson, and Chip Mellor

We filed for attorney and expert witness fees under the Equal Access to Justice Act (EAJA) after our successful CFTC challenge. Unlike in Section 1983 cases, you are not automatically entitled to fees if you prevail under EAJA, which applies to the federal government. You must show not only that you prevailed but also that the government's legal

position in the case was not “substantially justified ” After some initial settlement negotiations, the CFTC decided that it would litigate and not agree to any amount

We briefed the question of whether the CFTC’s position was substantially justified and waited about a year for the judge’s opinion On December 18, 2002, Magistrate Judge John Facciola, to whom the attorney fee question was assigned, issued a blistering opinion against the CFTC, ruling that the agency’s position was not “substantially justified ” Having determined that the CFTC must pay our attorney fees, he ordered the parties to try to settle the matter. The CFTC owed us \$198,000 in attorney and expert witness fees Given the CFTC’s recalcitrant efforts to settle this matter, we ended the negotiations and filed an amended application to the court on February 7, 2003.

On November 25, 2003, the judge awarded us \$182,425.55 in fees, almost all we asked for The CFTC has appealed the judge’s ruling to the U.S. Court of Appeals for the D.C. Circuit. The CFTC filed its brief in May and our brief is due on June 21, 2004. The CFTC can file a reply brief after that and oral argument has been scheduled for October 8, 2004 before Judges Edwards, Henderson, and Roberts of the D.C. Circuit

**Salib v. City of Mesa** (Arizona Chapter Free Speech—Winchell’s Donut Shop)

Court. Arizona Court of Appeals

IJ Attorneys Tim Keller

*Pro Bono* Counsel Court Rich

This is the Arizona Chapter’s first referral case. Court Rich is the *pro bono* lead counsel in this challenge to the City of Mesa’s sign code on behalf of Ed Salib, the owner of a Winchell’s donut franchise. At the time of filing, Mesa’s sign code prohibited any business located in its downtown redevelopment area from hanging any sign that covered more than 30% of any windowpane or casement area The result was that Salib could not hang even a single sign advertising the monthly specials. After filing the case, Mesa amended its sign code to require that signs cover no more than 30% of the total window space – defined as any set of windowpanes or casement areas separated by less than six inches. Under this new ordinance, Salib can hang three standard signs, but he still could not display as many signs as desired so the lawsuit continued. On April 22, 2004, the trial court judge issued a four sentence minute entry denying our motion for summary judgment and granting Mesa’s cross-motion for summary judgment. The ruling offered no legal analysis and an appeal notice was promptly filed. Our opening appellate brief is due on Monday, August 23, 2004

**ForSaleByOwner.com, et al. v. Zinneman, et al.** (First Amendment)

Court U.S. District Court for the Eastern District of California, Judge Morrison C. England (Sacramento)

IJ Attorneys Steve Simpson and Chip Mellor

Local Counsel Dan Kelleher of O’Brien & Kelleher

On May 14, 2003, we filed a lawsuit against the California Commissioner of Real Estate and the Attorney General challenging the State’s real estate broker licensing provisions The original plaintiffs in the case were ForSaleByOwner.com, an on-line real estate classified ad

service, and its California affiliate, Jeff Chadbourne, who published ForSaleByOwner Magazine in Sacramento. However, in March 2004 Jeff Chadbourne stopped operating his business and was dismissed from the case in June.

The case arises out of the California Department of Real Estate's efforts to require on-line real estate classified ad companies such as ForSaleByOwner.com to obtain real estate brokers licenses as a condition of doing business in California. Obtaining a real estate brokers license takes several years and would be cost prohibitive for companies such as ForSaleByOwner.com. We contend that requiring such companies to obtain a brokers license violates the First Amendment by erecting a prior restraint on free speech, unconstitutionally regulating commercial speech, and unconstitutionally discriminating on the basis of the medium used to convey information (the licensing law expressly exempts newspaper classified ads) and the views of the speakers.

In January 2004, the Defendants filed a motion for judgment on the pleadings asking the court to dismiss our complaint for failure to state a claim, which the court denied in February. Discovery was completed in April, and both sides are currently briefing motions for summary judgment.

**Cochran v. Veneman, et al.** (First Amendment—"got milk")

Court: U.S. Court of Appeals for the Third Circuit (on appeal from the U.S. Dist. Ct. for the Middle District of Pennsylvania)

IJ Attorneys: Steve Simpson, Chip Mellor, and Scott Bullock

Local Counsel: Walter Grabowski of Holland & Grabowski in Wilkes Barre, Pa

This is an appeal of a case challenging the Dairy Promotion Act, which is a federal act that authorizes the Secretary of Agriculture to create a promotional program for dairy products funded by mandatory assessments on dairy farmers. The case is one of a number of similar cases that have challenged agriculture promotional acts in recent years, one of which has recently been accepted for review by the Supreme Court. We took the case over from private counsel after the plaintiffs lost in district court, and we won our appeal before the Third Circuit in February.

Our clients are Joseph and Brenda Cochran, who own and operate a commercial dairy farm in Tioga County, Pennsylvania. They challenged the Dairy Act in district court arguing that the Act's mandatory assessments violated their free speech rights by requiring them to finance speech with which they disagree. The advertisements created under the Dairy Act promote milk as a generic product. The Cochrans are traditional dairy farmers (i.e., they don't use bovine growth hormone and are generally easier on their cows and on their land than larger scale commercial dairy farms) and thus have an interest in distinguishing their milk and their farming methods from others. They object to being required to finance advertising that suggests that all milk is the same regardless of how it is produced, especially since they have chosen to farm in a traditional manner. The Cochrans lost their case in district court, and we took over the appeal last summer.

Oral argument took place on January 12, 2004, and the Third Circuit issued a unanimous decision in our favor one month later. The court concluded that the speech financed by the Dairy Act is government-compelled private speech, rather than "government speech," and thus not

immune from First Amendment scrutiny. The court then held that the Act violates the Cochran's First Amendment rights by requiring them to finance speech with which they disagree. The district court had concluded that the Dairy Act was part of a wider scheme of economic regulation and thus upheld it as an economic, rather than a speech, regulation, but the Third Circuit rejected this argument. The Third Circuit's decision came on the heels of two favorable decisions from the 8<sup>th</sup> and 6<sup>th</sup> Circuits striking down the Beef and Pork Promotion Acts, respectively. The 9<sup>th</sup> Circuit is also considering a promotional act challenge, as have several state supreme courts. On May 24, 2004, the U.S. Supreme Court granted the government's petition for certiorari in the 8<sup>th</sup> Circuit case, *Livestock Marketing v. Veneman*. The government has until September 1, 2004 to decide whether to appeal our case to the Supreme Court.

**Ballen, et al. v. City of Redmond, et al.** (Washington Chapter First Amendment—Blazing Bagels)

Court: U.S. Court of Appeals for the Ninth Circuit (on appeal from U.S. Dist. Ct. for the Western District of Washington)

IJ Attorneys: William R. Maurer and Jeanette Petersen

This is an appeal of a case challenging the City of Redmond's ban on portable signs containing certain kinds of commercial speech. After prevailing in U.S. Dist. Ct. for the Western District of Washington, the City of Redmond has filed an appeal with the Ninth Circuit Court of Appeals.

IJ-WA represents Dennis Ballen, the owner of Blazing Bagels, a bagel store in Redmond, WA. To attract customers, Ballen had an employee stand on the corner of a busy nearby street with a sign saying "Fresh Bagels – Now Open" and a detachable arrow pointing to the store. In June 2003, the City of Redmond issued a cease and desist letter to Ballen informing him that his sign holder violated the City's prohibition against portable signs. The ordinance cited by the City in its cease and desist letter bans all portable signs and then creates five pages of exceptions based on the content of the message sought to be conveyed.

IJ-WA brought suit in King County Superior Court alleging that the ordinance violates Ballen's free speech rights under the United States and Washington Constitutions. The City removed the case to federal court. In January 2004, Judge Thomas Zilly enjoined the enforcement of the Redmond sign ban pending trial, ruling that Redmond's ordinance was likely unconstitutional. IJ-WA and the City of Redmond filed cross motions for summary judgment. On June 15, 2004, Judge Marsha Pechman granted IJ-WA's motion for summary judgment, ruling that the ban was unconstitutional. Judge Pechman explained that Redmond had failed to produce evidence that the ban, with its numerous exceptions based on content, actually achieved Redmond's purported goal of advancing traffic safety and aesthetics.

On July 13, 2004, the City of Redmond, appealed the district court ruling that Redmond's ban on certain portable signs is unconstitutional. The appeal asks the U.S. Ninth Circuit Court of Appeals to overturn Judge Marsha Pechman's ruling, which concluded that Redmond's sign ban violated the First Amendment and the Washington Constitution.



**Epoch Design, LLC (d/b/a Futon Factory) et al. v. City of Lynnwood** (Washington Chapter First Amendment)

Court: Snohomish County Superior Court

IJ Attorneys: William R. Maurer and Jeanette M. Petersen

This is a challenge to the City of Lynnwood's ban on portable signs containing certain kinds of commercial and non-commercial speech. IJ-WA represents the owners of the Futon Factory, a small chain of family owned stores in the Puget Sound area. On weekends, the owners of the store employed a person (via a temporary employment agency) to stand on a nearby street with various signs advertising the Futon Factory. The sign carried by the employee was an "A-frame" sign with text on both the front and back of the signs.

A Lynnwood Code Enforcement Officer verbally warned the owners a number of times that their sign was in violation of the Lynnwood Municipal Code (LMC). The owners ignored the warnings. In mid-December 2003, the owners changed one of the signs on the A-frame to include the message "The Futon Factory Believes in Free Speech," while continuing to display a commercial message on the other side of the A-frame. On February 13, 2004, the City issued a written warning to the owners. On February 24, 2004, the City issued a "Civil Penalty Order," alleging that the continued use of a sign carrier violated the provisions of the LMC.

On March 5, 2004, the owners appealed the Civil Penalty Order, *pro se*, claiming that the Lynnwood ordinance was "unconstitutional, unfair to business, [and] discriminatory selective enforcement." The City moved for Summary Dismissal of the action, alleging that the Hearing Examiner lacked jurisdiction to consider the challenge to the constitutionality of the Lynnwood ordinance. IJ-WA concurred. On June 3, 2004, the Hearing Examiner issued an Order of Summary Dismissal, on the grounds that the appeal "fails to state a claim for which the Examiner has jurisdiction to grant relief, is without merit on its face [and/or] is frivolous." This Order terminated the Hearing Examiner's jurisdiction over the administrative appeal.

On June 24, 2004, IJ-WA filed an action in Snohomish County Superior Court alleging that the Lynnwood ordinance violates Futon Factory's free speech rights under the United States and Washington Constitutions.

**Association of American Physicians and Surgeons et. al. v. Brewer et. al.** (Arizona Chapter First Amendment—Clean Elections II)

Court: U.S. District Court for the District of Arizona

IJ Attorneys: Tim Keller and Scott Bullock

This case challenges the constitutionality of the matching funds provision and onerous reporting requirements for nonparticipating candidates pursuant to Arizona's Citizens Clean Elections Act on First and Fourteenth Amendment grounds. We represent the Association of American Physicians and Surgeons, a professional medical group founded in 1943 and headquartered in Tucson, Matt Salmon, former three-term U.S. Congressman and 2002 Arizona gubernatorial candidate, Dean Martin, a sitting two-term state Senator, and Lori Daniels, former state legislator.

IJ filed a motion for preliminary injunction on February 19, 2004, three weeks after filing

the complaint. The Arizona Center for Law in the Public Interest and the Brennan Center for Justice filed papers to intervene in the suit on behalf of government-funded candidate Stephen Poe and the Clean Elections Institute, successor organization to Arizonans for Clean Elections, the group that sponsored the Act. Over our opposition, intervention was granted. Both the State and the Intervenors filed motions to dismiss. District Judge Earl H. Carroll denied the preliminary injunction motion on July 8, 2004. We are still waiting for a ruling on the pending motions to dismiss.

**Lavis, et al. v. Bayless, et al.** (Arizona Chapter First Amendment Case)

Court: Arizona Supreme Court

IJ Attorneys: Tim Keller

In October, the Arizona Supreme Court ruled 5-0 that the compulsory funding provisions of the Clean Elections Act do not violate the First Amendment. Because there is no association, and anyone potentially can come within the class of people who have to pay, the Court held it did not amount to compelled speech. The Court also concluded that the program is viewpoint-neutral.

The decision was very disappointing, particularly in that there were no dissents. The two justices who seemed inclined in our direction at oral argument included one justice who was sitting in his first argument, and one appointed from the Court of Appeals to sit in place of a recused justice, so it may be that they didn't want to rock the boat. Our petition for writ of *certiorari* to the U.S. Supreme Court was denied.

**Simpson v. City of Peoria** (Arizona Chapter First Amendment Case)

Court: Superior Court for the State of Arizona, Maricopa County

IJ Attorneys: Tim Keller

Jason Simpson, the owner and operator of Peoria Auto Sales, in response to the terrorist attacks of Sept. 11 hung around and through his sales lot over 100 miniature American flags. In late 2002, the City of Peoria deemed the flags "visual clutter" and threatened Mr. Simpson with six months in prison and \$1000 in fines if he did not remove the flags. In December 2002, the Arizona Chapter filed a Motion for Preliminary Injunction and a Complaint seeking declaratory and injunctive relief in the Maricopa County Superior Court.

At the hearing on our Preliminary Injunction motion, the City of Peoria admitted several sections of its sign code are unconstitutional and told the judge that no prosecution would occur pending the ordinance's amendment. The provisions challenged in our Complaint were not among the provisions the City amended and on May 29 Simpson was again cited for flying the flags, but this time under a different section of the code.

The case was voluntarily dismissed after Simpson took down the flags following his arrest on multiple counts of sexual misconduct with a minor and possession of child pornography. Ultimately, Simpson was released and no criminal charges ever filed because there was not enough evidence to prosecute the case.

**New Orleans Book Vending, Wexler v. New Orleans** (First Amendment and Economic Liberty)

Court: U S District Court for Eastern District of Louisiana, Judge Stanwood R. Duval, Jr  
IJ Attorneys: Dana Berliner and Chip Mellor  
Local Counsel: Robert Eitel

On April 30, 2003, we had a hearing on the motion for preliminary injunction to allow our clients to sell their books on the street. We asked for them to be able to sell in four different locations. At the hearing, both of our clients testified about their experiences with the City of New Orleans licensing people, the books they wanted to sell, and the type of business they wanted to have. Josh testified about how the city attorney had told him it wasn't her job to help him and he should get a lawyer. We also introduced evidence about each particular location at which they wanted to sell, including photos and measurements.

Although the burden of proof fell on the city, its lawyer elected to put on no evidence supporting the government's position under strict scrutiny. The city primarily argued that book selling was the same as soliciting for commercial purposes, like distributing advertising brochures. They could thus have a license, but not for a table. He proposed that they carry their books door to door.

The Court issued its decision on June 17, 2003. Not only did he hold that New Orleans had violated the First Amendment, he also held that tables were the only practical way to sell books. So if they passed an ordinance banning tables that would be unconstitutional as well. He then spontaneously converted the preliminary injunction to a permanent one and closed the case.

The decision only gave the plaintiffs permission to sell at two locations, so we moved to correct the opinion to add the other two and also to grant the plaintiffs their \$1 in nominal damages, which they want to frame. On July 10<sup>th</sup>, the judge added the dollar and one location but refused the other, because he thought the sidewalk wasn't wide enough. We then reached an agreement with the city that the plaintiffs could also sell their blank journals. We also agreed to attorneys fees. We then stipulated to closing the case and dismissing our claims about the journals without prejudice. The opinion has now been published and can be used as precedent in future cases.

Our clients continue to sell their books, and they say the business is doing well.

**Luigi Battaglieri and the Michigan Education Association v. The Mackinac Center** (First Amendment)

Court: Michigan Court of Appeals (appeal from the Circuit Court of Ingham County)  
IJ Attorneys: Clark Neily, Chip Mellor, and Steve Simpson  
Local Counsel: Christine Mason Soneral

In this case we successfully defended the free speech rights of a sister-organization that had been sued by the Michigan Education Association (MEA) and its president for accurately quoting the MEA's president in a fundraising newsletter. In October, 2001, the president of the MEA, Luigi Battaglieri, told a room full of reporters that he "admire[d]" what the Mackinac

Center had done. Shortly after the Mackinac Center included this quote in a fundraising letter, the MEA and its president filed a lawsuit claiming the Center had no right to use the quote without their permission. Later, they amended their suit to allege that the Mackinac Center had falsely insinuated that the MEA and its president “endorse” the substance of the Center’s work when in fact they do not.

In December 2002, the trial court judge denied the parties’ cross-motions for summary judgment. We filed an interlocutory appeal of that decision in January, and on March 3, 2003, the Michigan Court of Appeals issued an order granting the request for interlocutory review and staying further proceedings in the trial court pending its ruling on the merits of the appeal. In March 2004, the Michigan Court of Appeals issued a unanimous opinion in which it found the plaintiffs’ claims to be without merit and ordered that the case be dismissed.

**Greene v. Southeast Middle School** (First Amendment)

Court. None (negotiations with potential defendant ongoing)

IJ Attorney Clark Neily

Local Counsel None

In this matter, IJ represents a 14-year old high school student named Amanda Greene who was suspended from school near the end of her eighth-grade year for posting a message on a fellow-student’s personal website in which she expressed her opinion that her school “sucked” and had “too many stupid rules.” The school administration seems to have been most concerned with comments posted by another student to the same website in which he made a number of unflattering and obnoxious (but clearly non-threatening) comments about teachers at the middle school. Amanda Greene neither participated in nor even knew about the posting of those comments, and yet she received the same 5-day suspension as the student who posted them. In addition to her suspension, Amanda was threatened by an armed “school resource officer” with criminal prosecution for alleged cyber-stalking and criminal libel.

The actions of the school administrators show a total lack of awareness for Amanda Greene’s First Amendment right to free expression. The Supreme Court has made very clear that those rights do not end at the schoolhouse steps, and instead must be balanced against the legitimate need of school officials to maintain discipline. Although the specific case law regarding student postings to off-campus websites is developing, it seems uniformly in favor of our position.

School district indicated that Amanda Greene’s records would be expunged and that appropriate amendments would be made to the district’s code of conduct to ensure that students’ First Amendment rights are properly respected.

We received the school district’s revised speech policy in July 2004. Amanda Greene and her family have indicated that they are not satisfied with the district’s response and are considering proceeding with litigation. We have advised them that, for a variety of reasons, IJ will most likely not represent them in court should they choose to file suit. However, we told them we would look for a local attorney who would take the case on a *pro bono* basis, and that search is ongoing.

## **ECONOMIC LIBERTY**

### **Powers, et al. v. Harris, et al.** (Economic Liberty—Oklahoma Caskets)

Court. U.S. Court of Appeals for the Tenth Circuit (appeal from the W.D. of Oklahoma)

IJ Attorneys Chip Mellor and Clark Neily

Local Counsel Andrew Lester

In this case we represent an Oklahoma woman, her business partner, and their Oklahoma-based company in a challenge to Oklahoma's casket sales restrictions, which, like Tennessee's, permit only fully licensed funeral directors to sell "funeral merchandise."

After a two-day bench trial in November 2003, Judge Stephen Friot issued a 34-page opinion in which he concluded that although he was "not persuaded that the provisions in question advance the cause of consumer protection" and despite his belief that "the actual motivation for enactment of the challenged legislation was, in all likelihood, far less altruistic than the rationales" proffered by the State of Oklahoma (i.e., consumer protection), he was nevertheless obliged to uphold the casket sales restrictions because to do otherwise would be to substitute his policy judgment for that of the legislature

We argued this case before a three-judge panel of the 10<sup>th</sup> Circuit on January 14, 2004. We are awaiting the court's decision.

### **Swedenburg, et al. v. Kelly, et al.** (Economic Liberty—New York Wine)

Court. U.S. District Court for the Southern District of New York

IJ Attorneys Clint Bolick and Steve Simpson

Local Counsel Lance Gotko

This case involves a challenge to New York's discriminatory ban on direct shipping of wine from out-of-state wineries to New York consumers. On February 12, 2004, the Second Circuit reversed the district court's favorable decision and upheld New York's ban on out-of-state direct shipping. The Supreme Court has since granted certiorari in our case and in a companion case involving direct shipping in Michigan, so the issue will finally be resolved by the Supreme Court.

The 2<sup>nd</sup> Circuit concluded that the 21<sup>st</sup> Amendment gives the states broad discretion to regulate the importation of alcohol and that the commerce clause limits this authority in only very narrow contexts, not applicable here. In essence, the court held that the state may require out-of-state wineries to establish a physical business operation within the state as a condition of direct shipping to consumers in the state. In our view, this is a departure from the Supreme Court's modern 21<sup>st</sup> Amendment cases and would defeat the purpose of the commerce clause.

Our opening brief in the Supreme Court was filed on July 29, 2004, along with the State of Michigan's brief in the Michigan appeal. Respondents' briefs in the two cases are due in September and the case is set to be argued in the November/December time frame.

**Ventenbergs, et al. v. City of Seattle, et al.** (Washington Chapter Economic Liberty—Trash Hauling)

Court. Washington State Court of Appeals Division I (appeal from King Co Superior Court)  
IJ Attorneys William R Maurer and Jeanette M Petersen

The Institute for Justice Washington Chapter filed suit in King County Superior Court on May 13, 2003. The suit challenged the City of Seattle's grant of territorial monopolies to Rabanco and Waste Management for the hauling of construction and demolition waste within the boundaries of the City.

In November, the City moved for summary judgment. Because we had not received the discovery requested, the date for consideration of the City's motion was delayed while discovery was completed. In late December, IJ-WA moved for summary judgment, as did Rabanco and Waste Management. Judge McBroom of the King County Superior Court heard arguments on all summary judgment motions on January 23, 2004. On February 9, 2004, the judge asked for additional briefing on the issue of whether the right to earn an honest living is a fundamental right. The supplemental briefs were filed on February 20, 2004.

On February 23, 2004, Judge McBroom issued a decision denying IJ-WA's motion for summary judgment and granting summary judgment in favor of the City, Rabanco and Waste Management.

On March 8, 2004, we filed a notice of appeal with the Washington State Court of Appeals Division I. On April 19, 2004, the Washington Refuse and Recycle Association filed a motion for permission to file an amicus brief with the Court of Appeals. IJ-WA filed our opening appellate brief with the Court of Appeals on June 28, 2004. On July 28, 2004, the City of Seattle, Rabanco, and Waste Management filed responsive briefs with the Court of Appeals. Also on June 28, 2004, the Washington Refuse and Recycle Association filed an amicus brief with the Court of Appeals. IJ-WA's reply briefs must be filed no later than August 27, 2004.

**Meadows v. Odom** (Economic Liberty—Louisiana Flowers)  
Court U S District Court for the Middle District of Louisiana  
IJ Attorneys Clark Neily and Chip Mellor  
Local Counsel Scott Wilson

This case is a challenge to Louisiana's florist licensing requirement, which requires would-be florists in Louisiana to pass a highly subjective licensing examination. Louisiana appears to be the only state in the country with such a requirement. The licensing exam, which includes both a written test and a hands-on practical component in which applicants are required to complete four different floral designs under significant time pressure, is graded by the very state-licensed florists with whom the applicants hope to compete. Historically, the exam has a pass rate of well below fifty percent, and it is so arbitrarily graded that even highly experienced florists who move to Louisiana from other states often find themselves unable to pass it.

We filed suit in federal court in Baton Rouge on December 18, 2003. The judge issued a scheduling order in April that has us conducting discovery throughout the summer and fall, with

summary judgment motions due at the end of December We are proceeding with discovery and lining up both fact and expert witnesses for our side

Notably, there was an unsuccessful legislative effort in May to eliminate the entire licensing regime for florists The Louisiana House voted 92-3 in favor of a bill that would have eliminated all government oversight of florists, but when the bill went over to the Senate, the Agriculture Committee killed it under pressure from licensed florist lobby and from the Commissioner of Agriculture, Bob Odom IJ took no official position regarding the proposed legislation

**Cornwell v. Board of Governors of UNC, et al.** (North Carolina Chapter Economic Liberty & Property Rights)  
Court. Wake County Superior Court  
IJ Attorneys: Clark Neily

We challenged a refusal by North Carolina State University to grant press credentials to media sources that are strictly “online,” or operate solely on the World Wide Web While the university will credential print, television, and radio entities, it will not credential online media – except for “official” school sites Our client, Jerry Cornwell, owns the StruttingWolf.com website which recently contracted with StateFans.com. Both websites are strictly online entities and been in business for a few years These two sites are the largest North Carolina State University sports sites as defined by traffic and hits Cornwell is seeking press credentials to get interviews with coaches and players, seats for the sporting events, and immediate news releases from the university.

The University of North Carolina at Chapel Hill (UNC-CH) has a similar policy, and thus is included in the suit. This case fits squarely into IJ’s core mission area in both economic liberty and property rights Having nationwide significance and impact, we included in our complaint a federal First Amendment claim in addition to state First Amendment claims. Declaratory judgment and injunctive relief are requested.

After determining in July of 2003 that potential client conflict issues made IJ North Carolina’s continued participation in this case untenable, we secured an agreement from Jerry Cornwell to withdraw from the representation and filed a voluntary motion to dismiss the case on his behalf.

**Craigmiles, et al. v. Giles, et al.** (Economic Liberty)  
Court. U S Court of Appeals for the Sixth Circuit (appeal from the E.D of Tennessee)  
IJ Attorneys. Chip Mellor and Steve Simpson  
Local Counsel: Hal North of Chattanooga’s Shumacker and Thompson

We filed our complaint on September 16, 1999, in the Eastern District of Tennessee, alleging that Tennessee’s requirement that retailers of funeral merchandise obtain funeral director’s licenses violated our clients’ right to earn an honest living under the Privileges or Immunities, Due Process, and Equal Protection clauses of the Fourteenth Amendment

The State did not file a petition for *certiorari*. On April 30th, IJ and the State filed an Agreed Order for costs to be taxed against the State in the amount of \$4,429.63

**Parker, et al. v. Morrison, et al.** (Economic Liberty)

Court: U.S. District Court for the District of Arizona

IJ Attorneys: Steve Simpson, and Tim Keller

Of Counsel: Robert D. Epstein, Epstein & Frisch and James A. Tanford, Indiana University School of Law

This lawsuit challenging Arizona's prohibition against direct interstate shipment of wine to consumers was filed on October 7, 2003. The state had officially taken the position that in-state wineries were permitted to ship to Arizona consumers. As soon as we filed the lawsuit, the state experienced a litigation conversion on this point. Following the U.S. Supreme Court's decision to grant *certiorari* in *Swedenburg v. Kelly*, this lawsuit was dismissed without prejudice.

**Farmer v. Arizona Board of Cosmetology** (Arizona Chapter Economic Liberty)

Court: Superior Court in and for Maricopa County

IJ Attorneys: Tim Keller

Local Counsel: Not necessary

This legal challenge to Arizona's cosmetology cartel on behalf of African hairbraider Essence Farmer was filed on December 8, 2003 in conjunction with the Goldwater Institute's release of Tim's study on barriers to entrepreneurship. The launch went exceedingly well. Shortly thereafter, the assistant attorney general, at the Board's direction, requested an extension of time to file the state's reply to pursue settlement negotiations. After the Board's January meeting, an offer to settle was extended that would completely exempt Essence from the cosmetology curriculum. However, before negotiations on the proposed settlement were complete, the Arizona Legislature amended the cosmetology regulations to completely exempt natural hair braiders from regulation. The lawsuit was dismissed, without prejudice, as moot.

## **PROPERTY RIGHTS**

**Kelo, et al. v. City of New London, et al.** (Connecticut Eminent Domain)

Court: Superior Court of New London

IJ Attorneys: Scott Bullock, Dana Berliner, and Clark Neily

Local Counsel: Scott Sawyer

In March 2004, the Connecticut Supreme Court, in a 4-3 vote, ruled against the Fort Trumbull property owners and upheld the use of eminent domain for economic development. Given the sweep of the Court's ruling and the fact that it was so close, we filed both a motion for reconsideration and a motion to stay the Court's judgment pending review by the U.S. Supreme Court. The Connecticut Supreme Court denied our motion for reconsideration but granted our motion for a stay. We filed our petition for *certiorari* on July 19, 2004 and we are in the process of rounding up several *amicus curiae* briefs to support it. This will be the first time the Court will have the chance to review the constitutionality of the use of eminent domain purely for the generation of tax revenue as opposed to the elimination of blight. The Court will most likely



make its decision on whether it will take up the case on the first Monday in October 2004 at the start of its new term

**Minnich, et al., v. Gargano, et al.** (New York Eminent Domain)

Court: Judge Harold Baer, U.S. District Court for the Southern District of New York,  
U.S. Court of Appeals for the Second Circuit  
IJ Attorneys: Dana Berliner and Chip Mellor  
Local Counsel: Marty Kaufman, Atlantic Legal Foundation

After the Second Circuit decision finding Brody's claims were not barred by res judicata and that he has standing, we are back in district court. Judge Baer asked the parties to rebrief our cross-motions for summary judgment on whether New York's statutes fail to give adequate notice and opportunity to be heard to people challenging the condemnation of their property. Our earlier briefing was prepared a couple years ago and included several other parties who are no longer part of the case. The Judge asked us to streamline the briefs, making them relevant only to the present parties and incorporating our analysis of new decisions and the Second Circuit opinion. The rebriefing was filed on July 1, 2004, and we are now awaiting a decision. If the Court finds that Brody's procedural due process rights were violated, we will then proceed to amend our complaint and argue about remedy. A declaratory judgment that his rights were violated will entitle Brody to \$1 and attorneys' fees. If the Court finds that Brody's procedural due process rights were not violated, we presumably will be able to appeal from that order.

**State of New Jersey v. One 1990 Ford Thunderbird/Thomas v. Farmer** (Forfeiture Case)

Court: Superior Court of New Jersey, Cumberland/Salem County  
IJ Attorneys: Scott Bullock, Deborah Simpson, and Chip Mellor  
Local Counsel: Joseph Chiarello

In this case, we challenge the direct profit incentive underlying New Jersey's civil forfeiture law, whereby law enforcement officials are entitled to keep the proceeds and property generated by forfeiture. We argued that this scheme violates the due process guarantees of the U.S. and New Jersey constitutions. We represent Carol Thomas, a former sheriff's deputy in Millville, New Jersey, whose son used her car without her knowledge or consent to sell marijuana to an undercover officer. The state arrested her son and filed a forfeiture action against her car, *State of New Jersey v. One 1990 Ford Thunderbird*. In addition to defending against the forfeiture action on behalf of Thomas, we filed a counterclaim in state court raising our constitutional arguments. We secured the return of her car and went on to brief and argue the constitutional claim.

Oral argument on the cross motions for summary judgment occurred on November 12, 2002 and, a month later, the trial judge declared the statutory section being challenged unconstitutional under the due process clauses of the U.S. and New Jersey constitutions. The judge stayed his ruling pending appeal.

The State filed its appellate brief in June 2003 and we filed our reply in August. The County Prosecutors' Association of New Jersey filed a brief on behalf of the State and the ACLU of New Jersey and the Atlantic Legal Foundation both filed a brief in support of our side. We

had oral argument in the case on March 31, 2004. On July 21, the Appellate Court reversed the trial court and ruled that New Jersey's civil forfeiture law is constitutional. We will file a Motion for Leave to Appeal to the New Jersey Supreme Court on September 9.

**New Hampshire Home Inspection Case** (Property Rights)

Court: United States District Court for the District of New Hampshire

IJ Attorneys: Bert Gall and Scott Bullock

Local Counsel: Curtis Payne

The property tax assessment code of New Hampshire requires both exterior and *interior* inspections of private homes throughout the state. If the property owner refuses an interior inspection, then, under New Hampshire law, the inspector may obtain an administrative search warrant to conduct the inspection. Of course, an administrative warrant, heretofore used only for business property or rental property, is based not on probable cause but merely on the existence of an inspection program. A magistrate automatically grants them. Even more disturbing, if a homeowner demands even an administrative warrant, he or she loses the right to appeal the eventual assessment.

The Board granted permission to challenge this inspection program as a violation of the Fourth Amendment to the U.S. Constitution. The case will build upon our successful challenge to an administrative inspection program for single-family rental homes in Park Forest, Illinois.

**Gamble, et al. v. City of Norwood** (Property Rights—Blight/Eminent Domain Challenge)

Court: Hamilton County Court of Common Pleas

IJ Attorneys: Scott Bullock and Dana Berliner

Local Counsel: Robert P. Malloy, Wood & Lamping, LLP

On September 23, 2003, we filed a lawsuit on behalf of a group of nine individuals and families in Norwood, Ohio (a separate city completely surrounded by Cincinnati), who face condemnation of their attractive, middle-class homes and businesses because the city has designated them as "blighted" and placed them in an urban renewal zone. The case has potential to build upon our challenge to the misuse of blight laws on the other side of Ohio (Lakewood, outside of Cleveland). Indeed, the neighborhoods sought to be taken in both cities are remarkably similar. And, adding to the outrage factor, the same private developer, Jeffrey R. Anderson, seeks the property in both Lakewood and Norwood so that he can build a complex of chain retail stores and high-end apartments. In this case, Anderson asked the city council to perform the urban renewal study, he paid for the study, and he is paying for all costs associated with the City's use of eminent domain, including paying the City's attorney's fees.

In November 2003, the City filed eminent domain actions against five of the home and business owners we represent. The judge in our original action decided that all of the issues raised in our complaint could be decided in the condemnation actions, so he dismissed our case on procedural grounds. We believe this ruling is clearly wrong under Ohio law especially since it leaves the other four owners who do not face immediate condemnation actions without a method to challenge the City's bogus blight designation. We have appealed that decision and we filed our brief on April 14, 2004, in the midst of the eminent domain trial described below.

Moreover, we are now raising our constitutional and statutory claims we originally brought in our September suit in the answers to the eminent domain actions filed by the City. Those cases were consolidated and put on a very expedited schedule. The trial lasted for one week, from April 12 through April 16, 2004. Both sides then filed post-trial briefs in the case, which were due on April 30. On June 14, the trial court ruled the City of Norwood abused its discretion in finding the Edwards Road neighborhood “blighted,” but went on to find that the area could be called “deteriorating.” Thus the judge ruled that the City was justified in using eminent domain to take five homes and businesses in the area so the land can be transferred to Cincinnati-based developer Jeffrey Anderson and his business partners for the Rookwood Exchange project.

**Brumberg, et al. v. City of Marietta, et al.** (Georgia property rights—forced inspections of rental property)

Court: Cobb County Superior Court

IJ Attorneys: Clark Neily and Chip Mellor

Local Counsel: Charles Mace

In July 2004, we filed suit in state court in Marietta, Georgia challenging a city of Marietta ordinance that requires landlords to have all of their properties inspected for possible housing code violations by city-approved “rental housing inspectors.” Thus far, the inspections have been performed without seeking explicit consent from tenants and without valid search warrants. We believe this violates the Fourth Amendment prohibition against unreasonable searches and seizures, and we have requested a permanent injunction forbidding any further warrantless, unconsented searches.

The ordinance at issue in our lawsuit has also been challenged by two sets of landlords in two separate lawsuits that are currently pending in Cobb County Superior Court. In the first of those suits, the landlords obtained a temporary restraining order forbidding the city of Marietta from requiring further inspections until the court has further considered the merits of the challenge. The court will most likely consolidate our lawsuit with the two pending landlord suits so that one judge will consider all three suits at the same time.

Although both sets of landlords have raised constitutional claims, their primary argument is that Marietta’s inspection ordinance conflicts with a state statute that forbids cities from “performing . . . inspections of rental properties” without probable cause. Accordingly, we expect that there will likely be an informal division of labor between us and the landlords in arguing the legal claims in this case—IJ will take the lead on the constitutional issues and the landlords will focus primarily on their statutory claims.

There has been no word from the court or from our other contacts in Marietta concerning scheduling of a hearing, but we expect the court to set one sometime in August or September.

**Utah Civil Forfeiture Case (Property Rights)**

Court: State Court

IJ Attorneys: Scott Bullock and Chip Mellor

Local Counsel: Andrew Stavros, Jenson & Stavros

In this case, we challenged an attempt by Utah law enforcement officials in the state's three largest counties to evade a citizen-approved initiative that eliminated the perverse (and unconstitutional) profit incentive that formerly led to forfeiture abuse in the state. The initiative, passed in 2000 with almost 70% of the vote, ended the same practice the trial court found unconstitutional in our New Jersey forfeiture litigation—giving police and prosecutors a direct profit incentive to take property. Under the initiative, all forfeited property and revenue must go to the education fund of the state. The district attorneys in Weber, Salt Lake, and Davis counties refused to abide by the initiative and kept at least \$238,000 for their own benefit.

In June 2003, we filed a “notice of claim” with the Attorney General of Utah, demanding that he take immediate action against the district attorneys or we would file suit on behalf of taxpayers to recover the funds. This was a standing requirement in Utah law in order to file a mandamus action against public officials. After unfavorable publicity in the wake of the filing of our claim and with a district court deciding in an ongoing forfeiture case that the initiative clearly applied, the district attorneys folded less than a month after we became involved. They agreed to turn over all disputed funds to the education fund of the state and continue to abide by the initiative. The Attorney General and the district attorneys loathe the initiative and continue to make legislative attacks against it, so we will be closely monitoring the situation to see if the law changes.

**City of Mesa v. Bailey** (Arizona Chapter Eminent Domain)

Court: Maricopa County Superior Court

IJ Attorneys: Tim Keller

Co-Counsel: Dale Zeitlin

This was the first case filed by the Institute for Justice Arizona Chapter. On October 23, 2001, IJ AZ filed papers challenging the City of Mesa's efforts to take Bailey's Brake Service and give it to another private individual to construct an ACE Hardware Store. In an effort to quick-take the property, the City of Mesa filed an application for an Order of Immediate Possession on November 19, 2001 and a two-day evidentiary hearing was held in March. The trial judge entered an order of immediate possession, but stayed his order to allow IJ-AZ to file an expedited appeal (referred to as a “Special Action”).

Three days after the case was featured in a *60 Minutes* segment, the Court of Appeals handed down its ruling striking down the City of Mesa's attempt to seize Bailey's Brake Service as unconstitutional because the intended use (an ACE Hardware Store) was private, not public.

After our victory in the Court of Appeals, and a decision by the City not to appeal the case to the Arizona Supreme Court, the case was remanded to the trial court for entry of final judgment. IJ-AZ filed its motion for attorneys' fees and on February 9, 2004, an order was entered awarding IJ-AZ \$127,832.50 in attorneys' fees and \$3,055.85 for a total of \$130,888.35.

The City declined to appeal the fees award. New legislation to curb municipal eminent domain abuses went into effect in September, 2003

**Saleet, et al. v. City of Lakewood** (Property Rights – Blight Case)

Court: Court of Common Pleas, Cuyahoga County, Ohio

IJ Attorneys: Dana Berliner and Bert Gall

Local Counsel: Michael Gareau, Sr. and David Gareau

On May 19, 2003, we filed suit in the state trial court asking for declaratory and injunctive relief preventing the City of Lakewood from condemning our clients' 12 homes and 6 businesses based on its finding that they are "blighted." The city attempted to use its blight designation as a legal justification to transfer our clients' properties to private developers; these developers would then build condominiums and "high-end" retail on the property. The city claimed that our clients' properties are "blighted" because, among other things, many of them do not have a two-car attached garage or two full bathrooms.

Meanwhile, two community groups gathered sufficient votes to force the project onto the ballot. One was a referendum to invalidate the particular project and the other was to invalidate the blight designation. We were not involved in the collection of signatures or creating the ballot initiatives, although, after they were on the ballot, we did help by providing signs and stickers, printing flyers, and the like. The referendum on the particular project—Issue 47—went to Lakewood voters in November 2003. The referendum passed, and the project was defeated. The second referendum, to invalidate the blight designation, went to the voters in March 2004. It also was successful. With both the project and the blight designation rejected, our lawsuit became moot, and we dismissed it without prejudice.

All our former clients continue to live in their homes and run their businesses in Lakewood.

**County of Wayne v. Hathcock** (Michigan Eminent Domain Amicus Brief)

Court: Michigan Supreme Court

IJ Attorneys: Dana Berliner

HAN Attorney: Ilya Somin

The Michigan Supreme Court decided to reconsider its decision in *Poletown*. That case, decided in 1981, held that Detroit could condemn an entire neighborhood—homes, businesses, schools—for a new General Motors plant. There was no blight, and this case was the first significant instance of condemnation for economic development alone. The current case involves an area near an airport that is being condemned with the stated purpose of economic development. Both the trial and appellate courts ruled against the owners, citing *Poletown*. We therefore filed an amicus brief arguing that the court should overrule *Poletown*. The brief was written by former IJ law clerk, now George Mason law professor, Ilya Somin, and by Dana. It was filed in early January 2004. Oral argument took place on April 21, 2004. On July 31, the Michigan Supreme Court overturned *Poletown*.

**Alibri v. Stadium Authority** (Michigan Eminent Domain Amicus Brief)

Court: Michigan Supreme Court

IJ Attorneys: Dana Berliner

At the same time the Michigan Supreme Court accepted review in *Hathcock*, it also accepted review in this case. The Stadium Authority threatened Freda Alibri with condemnation if she did not “voluntarily” sell her property. She did so, on the explicit understanding that the government was threatening to condemn it and that there were no plans to transfer the property to a private party. In fact, the Authority didn’t even have the statutory authority to condemn at the time and immediately transferred the property to a company owned by the sports team owner, Mike Ilitch. The money used to pay Mrs. Alibri was borrowed from the Ilitch company. Alibri then tried to rescind the sale. The trial court ruled in her favor, but the appellate court said, essentially, “she sold it.” IJ did an amicus brief talking about the use of threats of eminent domain and how agencies shouldn’t lie about having the power in order to get property. Our brief was filed January 29, 2004. The case was argued the day before the *Hathcock* case, discussed above. The Michigan Supreme Court reversed the appellate court and returned the property to its rightful owner—Mrs. Alibri.

**Lowery v. Muskogee County** (Oklahoma Eminent Domain Amicus Brief)

Court: Oklahoma Supreme Court

IJ Attorneys: Dana Berliner

HAN Attorney: Daniel Muino

The Oklahoma Supreme Court granted review of a condemnation by a county for an electric company. However, because the electric company will not be serving the public, it was unable to proceed under the separate statutes for electricity condemnations. The stated purpose of the condemnation is solely economic development. The Oklahoma Supreme Court has never decided an economic development case, so our brief cited the caselaw of other states and urged the court to rule that economic development is not a public use. Our brief was filed in late February 2004. The Oklahoma Supreme Court granted our motion to file the amicus but has not yet ruled on the case. The government opposed our motion to file the brief and then responded to it by saying that we had not relied on Oklahoma caselaw. The stated purpose of our brief was to acquaint the court with decisions in other states. We hope for a decision this summer.

**MISCELLANEOUS**

**Hollywood Incentives** – (North Carolina Chapter)

Court: Wake County Superior Court

IJ Attorneys: Clark Neily

This was a challenge to North Carolina’s “Film Industry Development Account,” which provided cash incentives to out-of-state film companies that came to North Carolina to film movies. We asserted that the program violated several provisions of the North Carolina constitution forbidding the government from engaging in this type of corporate welfare.

The State filed a motion to dismiss our case in April 2003, which the trial court granted in

August 2003. IJ-NC appealed that ruling, but shortly thereafter, the decision was made to shut down the North Carolina office. In light of that development, and in light of the fact that there would appear to be no legal hurdle to simply filing a new lawsuit should IJ or some other organization choose to do so in the future, we decided to dismiss the appeal and terminate the litigation

## **AMICUS BRIEFS**

**99 Cents Store v. Lancaster** (Eminent domain amicus)

**Barrow v. Greenville Independent School District** (Parental liberty amicus brief)

**Beskind v. Easley** (Wine Direct Shipping—North Carolina)

**Bolick v. Roberts** (Wine Direct Shipping—Virginia)

**Dickerson v. Bailey** (Wine Direct Shipping—Texas)

**City of Las Vegas Redevelopment Agency v. Pappas** (Nevada Eminent Domain *Amicus* Brief)

**Fitzgerald v. Racing Association of Central Iowa** (Equal Protection Rational Basis *Amicus* Brief)

**Grutter v. Bollinger; Gratz v. Bollinger** (Racial Preferences *Amicus* Brief)

**Heald v. Engler** (Wine Direct Shipping—Michigan)

**Lawrence v. Texas** (Police power amicus brief)

**Locke v. Davey** (School Choice *Amicus*)

**Rukab v. City of Jacksonville Beach** (Eminent Domain *Amicus*)



# Application for Extension of Time To File an Exempt Organization Return

OMB No. 1545-1709

► File a separate application for each return.

- If you are filing for an **Automatic 3-Month Extension**, complete only **Part I** and check this box ☒
- If you are filing for an **Additional (not automatic) 3-Month Extension**, complete only **Part II** (on page 2 of this form).

**Note: Do not complete Part II unless you have already been granted an automatic 3-month extension on a previously filed Form 8868.**

**Part I Automatic 3-Month Extension of Time** - Only submit original (no copies needed)

**Note: Form 990-T corporations requesting an automatic 6-month extension - check this box and complete Part I only**

All other corporations (including Form 990-C filers) must use Form 7004 to request an extension of time to file income tax returns. Partnerships, REMICs and trusts must use Form 8736 to request an extension of time to file Form 1065, 1066, or 1041.

Type or print	Name of Exempt Organization	Employer identification number
	INSTITUTE FOR JUSTICE	52-1744337
	Number, street, and room or suite no. If a P.O. box, see instructions. 1717 PENNSYLVANIA AVENUE, NW, NO. 200	
File by the due date for filing your return See instructions	City, town or post office, state, and ZIP code. For a foreign address, see instructions. WASHINGTON, DC 20006	

**Check type of return to be filed** (file a separate application for each return):

- |  |   |                                    |
|--|---|------------------------------------|
| <input checked="" type="checkbox"/> Form 990 | <input type="checkbox"/> Form 990-T (corporation)                 | <input type="checkbox"/> Form 4720 |
| <input type="checkbox"/> Form 990-BL         | <input type="checkbox"/> Form 990-T (sec. 401(a) or 408(a) trust) | <input type="checkbox"/> Form 5227 |
| <input type="checkbox"/> Form 990-EZ         | <input type="checkbox"/> Form 990-T (trust other than above)      | <input type="checkbox"/> Form 6069 |
| <input type="checkbox"/> Form 990-PF         | <input type="checkbox"/> Form 1041-A                              | <input type="checkbox"/> Form 8870 |

- If the organization does **not** have an office or place of business in the United States, check this box ☐
- If this is for a **Group Return**, enter the organization's four digit Group Exemption Number (GEN) \_\_\_\_\_. If this is for the **whole** group, check this box ☐. If it is for part of the group, check this box ☐ and attach a list with the names and EINs of all members the extension will cover.

1 I request an automatic 3-month (6-month, for **990-T corporation**) extension of time until FEBRUARY 15, 2005 to file the exempt organization return for the organization named above. The extension is for the organization's return for:  
► ☐ calendar year \_\_\_\_\_ or  
► ☒ tax year beginning JUL 1, 2003, and ending JUN 30, 2004

2 If this tax year is for less than 12 months, check reason: ☐ Initial return ☐ Final return ☐ Change in accounting period

3a If this application is for Form 990-BL, 990-PF, 990-T, 4720, or 6069, enter the tentative tax, less any nonrefundable credits. See instructions \$ \_\_\_\_\_

b If this application is for Form 990-PF or 990-T, enter any refundable credits and estimated tax payments made. Include any prior year overpayment allowed as a credit \$ \_\_\_\_\_

c **Balance Due.** Subtract line 3b from line 3a. Include your payment with this form, or, if required, deposit with FTD coupon or, if required, by using EFTPS (Electronic Federal Tax Payment System). See instructions \$ N/A

## Signature and Verification

Under penalties of perjury, I declare that I have examined this form, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete, and that I am authorized to prepare this form

Signature ►  Title ► C.P.A.

Date ► 11/12/04 Form 8868 (12-2000)

LHA For Paperwork Reduction Act Notice, see instruction